



July 31, 2001

Ms. Michelle Simpkins  
Winstead, Sechrest & Minick  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2001-3309

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150069.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for the following:

1. [A]ll documents discussed in the Board of Directors Executive Session on May 10, 2001.
2. [A]ll documents related to any pending or threatened litigation related to any of the matters discussed in the executive session during the above cited meeting.
3. [A]ll documents handed out during the Board of Directors meeting on May 10, 2001, to specifically include all of those handed out by Director Birkman.

You state that the district has responded to request items 2 and 3 and that this request for a ruling relates only to request item 1. You claim that the submitted document is excepted from disclosure under sections 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted document.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. See Open Records Decision No. 574 (1990). Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990).

You state that "[t]he [draft] Agreement contains Counsel's mental impressions and legal advice regarding bonds, impact fees, and the sale and purchase of certain property by the District;" and that "[c]ounsel created the Agreement containing its mental impressions, opinions and legal advice to further Counsel's rendition of legal services to the District." After considering your arguments and examining the document at issue, we conclude the document reflects an attorney's legal opinion or advice. We therefore determine the document may be withheld in its entirety pursuant to section 552.107(1) of the Government Code. Because we reach a determination under section 552.107(1), we need not address your additional arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

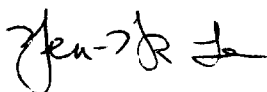
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DKB/seg

Ref: ID# 150069

Enc. Submitted documents

c: Mr. John C. McLemore  
84010 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)